

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:05CV73

JOSEPH N. BRIGGS,

Plaintiff,

Vs.

**CITY OF ASHEVILLE, *i.e.*, ASHEVILLE
POLICE DEPARTMENT; and COUNTY OF
BUNCOMBE, *i.e.*, BUNCOMBE COUNTY
SHERIFF,**

Defendants.

ORDER OF DISMISSAL

THIS MATTER is before the Court on the Magistrate Judge's Memorandum and Recommendation, filed July 20, 2005.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On July 20, 2005, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding the Defendants' motions to dismiss. The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 14 days of

service of the Recommendation; the period within which to file objections expired on August 8, 2005. No written objections to the Memorandum and Recommendation have been filed.¹

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Defendants' motions be allowed.

IT IS, THEREFORE, ORDERED that the motions of Defendants City of Asheville/Asheville Police Department and County of Buncombe/Buncombe County Sheriff to dismiss for failure to state a claim are **ALLOWED**, and this case is hereby **DISMISSED WITH PREJUDICE**.

¹Instead of filing objections to the Memorandum and Recommendation, the Plaintiff filed a notice of appeal from the "final judgment." Because this is an interlocutory appeal, it does not divest this Court of jurisdiction to make the rulings herein.

Signed: August 22, 2005

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

